

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

United States of America,)	CASE NO. 1:97 CR 323
)	
Plaintiff,)	JUDGE PATRICIA A. GAUGHAN
)	
vs.)	
)	
Edward Julian,)	<u>Order</u>
)	
Defendant.)	

This matter is before the Court upon defendant's Motion for Reconsideration from an Order Entered on June 19, 2006. For the following reasons, the motion is DENIED.

On November 28, 1998, Honorable Judge Matia sentenced Edward Julian in this criminal case following his plea of guilty. On February 5, 2002, Julian filed his Motion to Correct Sentence Pursuant to 28 U.S.C. § 2255 (hereafter, the Petition), Case No. 1:02 CV 218. Julian argued, in part, that the court lacked jurisdiction to enhance his sentence where Julian never received the required notice of the enhancement. By Memorandum of Opinion and Order of April 29, 2002, Judge Matia dismissed Julian's Petition as untimely because it was not filed within the one-year statute of limitations contained in § 2255. Julian appealed

the dismissal. The Sixth Circuit agreed that the Petition was time-barred. On October 3, 2003, Julian filed a motion in the district court to vacate the April 29, 2002 dismissal. Judge Matia denied the motion and Julian appealed. By Order of September 15, 2004, the Sixth Circuit again rejected Julian's appeal. On March 10, 2005, Julian filed another motion in the district court to vacate the April 29, 2002 dismissal. The matter has been brief and reassigned to Honorable Judge Boyko, as Judge Matia no longer serves on the district court.

On June 2, 2006, Julian filed a Motion to Vacate Enhanced Sentence for Lack of Subject Matter Jurisdiction. The motion was filed in his criminal case and reassigned to this Court. Because this same argument was presented in his § 2255 motion, this Court previously denied the motion finding that the issue was properly before Judge Boyko in Case No. 1:02 CV 218.

Julian now seeks reconsideration arguing that the only issue before Judge Boyko is the timeliness of his Petition. This Court disagrees. As stated earlier, the § 2255 raised the issue of enhancement. The issue was not resolved on the merits because the Petition was found to be untimely. If Julian's present Motion to Vacate pending before Judge Boyko in Case No. 1:02 CV 218 is successful, that court will reach the issue of the sentencing court's jurisdiction to enhance the sentence. Accordingly, the Motion to Vacate Enhanced Sentence for Lack of Subject Matter Jurisdiction filed in this Court is denied because the issue is properly before Judge Boyko.

For these reasons, defendant's Motion for Reconsideration from an Order Entered on June 19, 2006 is denied.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan

PATRICIA A. GAUGHAN

United States District Judge

Dated: 7/11/06